

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:

SALDIVAR HOME HEALTH, INC.

DEBTOR

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CASE NO. 16-52586-CAG

CHAPTER 11

Hearing Date Requested

MOTION OF THE UNITED STATES TRUSTEE TO DISMISS CASE

TO THE HONORABLE CRAIG A. GARGOTTA
UNITED STATES BANKRUPTCY JUDGE:

JUDY A. ROBBINS, THE UNITED STATES TRUSTEE for Region 7 ("UST"), through the undersigned counsel, respectfully moves for an order pursuant to 11 U.S.C. § 1112(b) dismissing this case. The debtor has not filed any operating reports for the months of February or March 2017 and thus the Court, the UST, and creditors cannot know whether the debtor is paying its obligations during the case or whether the debtor is generating sufficient cash flow to fund a plan. In addition, the limited information provided shows large losses each month and an inability to fund a plan of reorganization through future cash flow. Finally, the debtor has not paid the fees owed

to the UST under 28 U.S.C. § 1930(a)(6) for the first quarter 2017. In support of this motion, the UST represents as follows:

I. BACKGROUND

1. On November 8, 2016, the debtor filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code. The debtor operates a home health care business. The debtor has not yet filed a plan of reorganization.

2. On its Schedule A/B, the debtor asserted that its assets were worth \$871,084.30, including \$345,880 in accounts receivable, \$456,772 in office furniture, machinery, and equipment, and \$46,360 in cars.

3. On Schedule D, the debtor listed Ford Credit as its only secured creditor for \$14,149.38. On Schedule E/F, the debtor listed the IRS with a priority claim for \$300,000.00 and general unsecured debts of \$3,119,536.79, with the largest claim owed to Palmetto GBA, LLC for \$2,964,025.00. The IRS has now filed a proof of claim asserting it is owed \$12,447.67 as a secured claim, \$289,475.14 as a priority unsecured claim, and \$33,685.46 as a general unsecured claim. The U.S. Department of Health and Human Services has filed a proof of claim for \$2,743,548.81 for Medicare overpayment, which is for the debt listed by the debtor to Palmetto GBA.

4. In a chapter 11 case, a debtor is required to file monthly operating reports by the 20th of the month for the previous month detailing its financial activity during that month. Local Rule 2015(b). The debtor has not filed any reports for February or March 2017. Moreover, the reports filed for December 2016 and January 2017 were incomplete. They did not contain any information for those months on MOR-6 Statement of Income (Loss) or MOR-7 Cash Receipts and Disbursements. The limited

information provided shows losses in the first three months of the case of \$59,967.00, \$116,686.23, and \$64,570.86.

5. Chapter 11 debtors owe quarterly fees to the United States Trustee for each quarter they are in a chapter 11. 28 U.S.C § 1930(a)(6). The quarterly fees for the first quarter 2017 were due on April 30, 2017. The debtor has not yet paid those fees. Because the debtor has not filed its operating reports for February and March 2017, the UST does not for certain how much the debtor owes in fees. However, based on its disbursements in January, the debtor likely owes \$4,875 for the first quarter 2017

II. THE CASE SHOULD BE DISMISSED.

6. Under section 1112(b) of the Bankruptcy Code, the Bankruptcy Court shall convert a case to chapter 7 or dismiss a case, whichever is in the best interest of the creditors and the estate, if the movant establishes cause, unless the Court finds that a chapter 11 trustee or examiner is in the best interests of the creditors and the estate or the Court finds and specifically identifies unusual circumstances that establish that conversion or dismissal of the case is not in the best interest of creditors and the estate. 11 U.S.C. § 1112(b).

7. "Timely and accurate financial disclosure is the life blood of the Chapter 11 process." *In re Berryhill*, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991). Because monthly operating reports are the means by which the creditors, the Court, and the United States Trustee can monitor a debtor's post-petition operations, the failure to timely file its monthly operating reports by itself constitutes sufficient cause to warrant conversion of the case to chapter 7 or dismissal of this chapter 11 case. 11 U.S.C. § 1112(b)(4)(F); *Roma Group, Inc. v. Office of the United States Trustee (In re Roma*

Group, Inc.), 165 B.R. 779, 780 (S.D.N.Y. 1994) (failure to file monthly operating reports "undermines the Chapter 11 process and constitutes cause for dismissal or conversion"); *In re Bacon*, 52 B.R. 52, 53-54 (Bankr. N.D. Iowa 1985) (failure to file monthly operating reports is sufficient "cause" to warrant dismissal of chapter 11 case because "creditors are not being provided the basic financial data necessary to make decisions regarding their best interests").

8. Because the debtor has not filed its recent operating reports, the Court, the UST, and creditors are unable to determine if the debtor has a reasonable likelihood of rehabilitation or if there has been a continuing loss to or diminution of the estate. Without operating reports, the Court, the UST, and creditors cannot know whether the debtor is paying its obligations as they come due post-petition or whether the debtor is accruing administrative expenses. Therefore, cause exists to dismiss the, and the case should be dismissed. 11 U.S.C. § 1112(b)(4)(F).

9. Moreover, the limited information provided in the operating reports shows losses each of the first three months between \$59,967.00 and \$116,686.23. Based on those losses, it appears unlikely the debtor will be able to propose a plan to pay its creditors through future operations. Therefore, cause exists to dismiss the case, and the case should be dismissed.

10. Finally, the debtor's failure to timely pay all quarterly fees owed to the UST also constitutes cause to dismiss the case. 11 U.S.C. § 1112(b)(4)(K).

WHEREFORE, for the reasons stated above, the UST prays that the Court enter an order dismissing the case. The UST requests any and all further relief as is equitable and just.

Respectfully submitted,

JUDY A. ROBBINS
UNITED STATES TRUSTEE
REGION 7

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION OF THE UNITED STATES TRUSTEE TO DISMISS CASE was served by electronic means for all Pacer system participants and/or by first class mail, postage prepaid, to all parties listed on the attached Service List on this the 5th day of May, 2017.

/s/ Kevin M. Epstein
Kevin M. Epstein
Trial Attorney

Label Matrix for local noticing
0542-5
Case 16-52586-cag
Western District of Texas
San Antonio
Tue May 2 11:42:33 CDT 2017

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Homecare Dimensions Inc
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Internal Revenue Service
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Ford Motor Credit Company LLC
Dept. 55953, P.O. Box 55000
Detroit, MI 48255

Internal Revenue Service
P. O. Box 21126
Philadelphia, PA 19114

End of Label Matrix	
Mailable recipients	36
Bypassed recipients	0
Total	36